

AMENDMENTS TO THE DRAWINGS:

The three attached sheets of drawings include changes to FIGS. 4a, 4b, and 4c. These three sheets replaces the original three sheets including FIGS. 4a, 4b, and 4c. In each of the drawings, reference numerals 37 and 39 have been removed and previously omitted reference numerals 13 and 27 have been added.

REMARKS

Claims 44-63 were presented for examination in the present application. The instant amendment cancels claims 45 and 56-60 without prejudice and adds new claims 80-81. Thus, claims 44, 46-55, 61-63, and 80 are presented for consideration upon entry of the instant amendment. Claims 44 and 80 are independent.

The Office Action objected to the drawings for including reference numerals 37 and 39, which were not mentioned in the specification. Figures 4a, 4b, and 4c have been amended to remove the objected reference numerals.

The Office Action also objected to the drawings for failing to show the claimed "body boundary", "break-off edge", and "temperature control device". The specification and drawings have been amended to show the body boundary 27 and the break-off edge 13, while claims 56-60 have been cancelled without prejudice.

The Office Action objected to the specification for referring to the claims and for including two reference numerals for the same element at page 15. The specification has been amended to obviate these objections.

Accordingly, Applicants respectfully request reconsideration and withdrawal of the objections to the drawings and specification.

Independent claim 44, as well as dependent claims 45-47, 49-57, 59, and 63, were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 2,462,805 to Danner (Danner). Dependent claims 48 and 56-60 were rejected under 35 U.S.C. §103(a) over Danner in view of Applicants' own U.S. Publication No. 2004/0065115 to Mueller et al. (the U.S. Mueller Publication).

Applicants submit that the U.S. Mueller Publication is not prior art with respect to the present application. The present application is a national stage entry of

International Application No. PCT/EP04/10969, which itself claims the benefit of German Application No. DE 103 48 098.6 filed on October 11, 2003. Thus, the present application has an effective filing date of **October 11, 2003**.

The U.S. Mueller Publication is published on April 8, 2004, namely after the effective filing date of the present application. In addition, the U.S. Mueller Publication has an effective date under 35 U.S.C. §102(e) of November 14, 2003, namely after the effective filing date of the present application. More specifically, the U.S. Mueller Publication is a National Stage entry of an International Application (published in the German language) for which the Notice of Acceptance designates November 14, 2003 as the date on which the application was accepted. Accordingly, Applicants submit that the U.S. Mueller Publication does not qualify as prior art with respect to the present application. Accordingly, reconsideration and withdrawal of the rejections to claims 48 and 56-60 in view of the U.S. Mueller Publication are respectfully requested.

Notwithstanding the above, independent claim 44 has been amended to include elements of claim 45, which has been cancelled. Thus, claim 44 recites that "said at least one displacement body has a cross sectional dimension, and wherein said at least one displacement body projects out of said nozzle in the drawing direction by at least half said cross sectional dimension (emphasis added)".

Applicants submit that Danner fails to disclose or suggest the claimed displacement body.

The Office Action asserts that Danner discloses in Figure 6 a displacement body that has an internal diameter of 0.9mm and a projection portion out of the nozzle of 0.8mm. Applicants traverse these assertions.

Under Federal Circuit precedent, "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." Hockerson-

Halberstadt Inc. v. Avia Group International, Inc., 55 USPQ2d 1487, 1491 (Fed. Cir. 2000), citing In re Wright, 193 USPQ 332, 335 (CCPA 1977) (“Absent any written description in the specification of quantitative values, arguments based on the measurement of a drawing are of little value.”), followed by Benetton Sportssystem USA, Inc. v. First Team Sports, Inc., No. 02-1004 (Fed. Cir. decided June 14, 2002).

In addition, Section 2125 of the Manual of Patent Examining Procedure states that “Proportions of features in a drawing are not evidence of actual proportions when drawings are not to scale.”

Danner is silent as to whether the drawings are to scale and the specification fails to provide the dimensions asserted by the Office Action. Accordingly, Applicants submit that the Office Action has failed to make a prima facie case of anticipation of the elements of claim 45, which have been incorporated into claim 44.

The Office Action failed to assert that Mueller disclosed or suggested the displacement body of claim 45, which has been incorporated into claim 44.

Therefore, claim 44 is not disclosed or suggested by Danner alone or in combination with Mueller. Claim 44, as well as claims 46-55 and 61-63 that depend therefrom, are in condition for allowance. Reconsideration and withdrawal of the rejections to claims 44, 46-55, and 61-63 are respectfully requested.

Claim 80 has been added to point out various aspects of the present application. It is submitted that claim 80 is directed to the elected embodiment of Group I. Support for new claim 80 can be found in the specification at least at page 32, lines 19-26, as well as Figures 4 and 5. No new matter is added.

Applicants specifically point out that claim 80 is not intended to be limited to the specific mechanisms of patentability previously argued with respect to any prior claims in this or any related applications. Accordingly, Applicants hereby rescind any

disclaimer of claim scope and, thus, any prior art for which such a disclaimer was made to avoid may need to be revisited by the Examiner with respect thereto.

It is believed that claim 80 is in condition for allowance. Claim 80 recites, in part, “a nozzle **defined by** an outer shell and a needle” and “a displacement body **projecting out** of the nozzle”. Here, the displacement body comprises “a hollow body”, where the hollow body is “arranged in said nozzle between said outer shell and said needle so that the at least one settable liquid can penetrate into a space between said outer shell and said hollow body **and** a space between said hollow body and said needle” (emphasis added).

Applicants submit that Danner fails to disclose or suggest the claimed nozzle. The Office Action asserts, with respect to claim 44, that Danner’s conduit 67 reads on the claimed “outer shell” and that Danner’s blow pipe 11 reads on the claimed “needle”. Applicants respectfully submit that the blow pipe and conduit of Danner clearly do not define a “nozzle” as in claim 80.

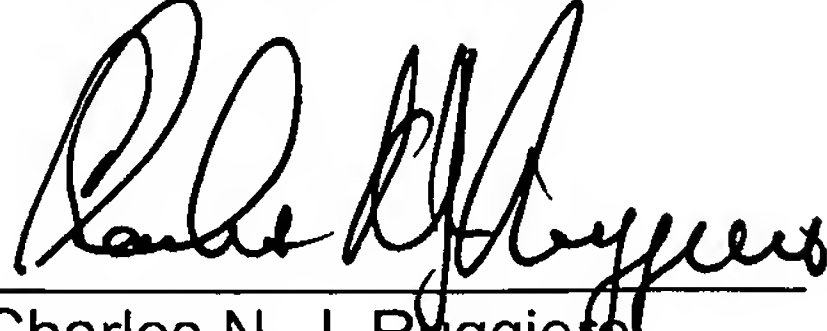
To the contrary, Danner discloses that blow pipe 11 ends in a disc 82 extending to near the lower end of the glass shaping element 53. See col. 7, lines 47-49 and Figure 6. Conduit 67 and blow pipe 11, therefore, do not define an outlet according to the invention which could be identified with the claimed “nozzle”.

Further, Applicants submit that Danner’s glass shaping element 53 is clearly not arranged in any portion of conduit 67 and blow pipe 11 as recited by claim 80.

In view of the above, it is respectfully submitted that the present application is in condition for allowance. Such action is solicited.

If for any reason the Examiner feels that consultation with Applicants’ attorney would be helpful in the advancement of the prosecution, the Examiner is invited to call the telephone number below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles N. J. Ruggiero", written over a horizontal line.

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